

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KARMA POWER, LLC, a Delaware  
corporation,

Plaintiff,

v.

HTP, INC., f/k/a HYTECH POWER, INC. f/k/a  
DEEC, INC. a Washington Corporation; EVAN  
JOHNSON, an individual; PHILLIP  
JENNINGS, an individual; and HENRY DEAN,  
an individual;

Defendants.

CASE NO. **20-cv-677**

NOTICE OF REMOVAL

King County Superior Court Case No.  
20-2-05855-6 SEA

✓ **Clerk's Action Required**

TO: UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON

Defendants HTP, Inc., Evan Johnson, Phillip Jennings, and Henry Dean (collectively,  
the "HTP defendants") hereby remove this action from the Superior Court of the State of  
Washington, King County to the United States District Court for the Western District of  
Washington at Seattle pursuant to 28 U.S.C. §§ 1338, 1441, 1446 and 1454. In support of this

NOTICE OF REMOVAL - 1  
(USDC Case No. )

USDC Case No. 20-cv-677  
7095203.2

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601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
(206) 628-6600

1 Notice of Removal, the HTP defendants provide the following short and plain statement of the  
2 grounds for removal.

### 3 **I. PROCEDURAL BACKGROUND**

4 1. Karma filed its complaint against the HTP defendants in the Superior Court of  
5 the State of Washington, King County on March 6, 2020, under Cause No. 20-2-05855-6 SEA.  
6 A true and correct copy of the complaint is being attached in conjunction with this Notice,  
7 along with all other docketed pleadings hereto.

8 2. The HTP defendants were served with a copy of the Summons and Complaint  
9 on March 7, 2020. True and correct copies of the service of Summons and Complaint on each  
10 defendant is being attached in conjunction with this Notice, along with all other docketed  
11 pleadings.

12 3. The complaint asserts three causes of action: conversion, violation of the  
13 Washington Trade Secret Act, and unjust enrichment. Specifically, the complaint alleges that  
14 non-party Hybris holds rights to certain hydrogen intellectual property (“Hydrogen IP”)  
15 developed by defendant Evan Johnson. (¶ 9.) Allegedly, Hybris assigned these rights to non-  
16 party Generation H2O (¶ 12), which developed the Hydrogen IP to include inventions to use  
17 hydrogen fuel or mixed hydrogen fuel in a Ford Raptor™ pickup truck (¶ 13). The complaint  
18 further alleges that in 2015, Generation H2O sold the hydrogen equipment embodying the  
19 Hydrogen IP along with the Ford Raptor™ to non-party Ebtec. (¶ 12). Subsequently, Ebtec  
20 assigned its rights to Karma. (¶ 16.) The complaint asserts that the HTP defendants are  
21 misappropriating this intellectual property despite not having any rights to it. (¶¶ 14-15).

22 4. One extremely significant fact has been omitted from the Complaint and that  
23 one fact makes patent law the overarching character of this case. HTP has filed thirteen patent  
24

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applications on its own behalf and, additionally, has purchased an issued patent from Plasma Drive, Inc.:

<b>Oxygen-Rich Plasma Generators for Boosting Internal Combustion Engines</b>	<b>Purchased by HTP</b>	Plasma Drive, Inc.	Patent No. 9,267,428
<b>Method of Generating &amp; Distributing a Second Fuel for an Internal Combustion Engine</b>	15/451266	HyTech Power, Inc.	Patented as 10,605,162
<b>Systems for HHO Gas Second Fuel Distribution and Control</b>	16/031827	HyTech Power, Inc.	Pending
<b>Electrolysis System Having In Situ HHO Storage</b>	16/031843	HyTech Power, Inc.	Pending
<b>Onboard Graphene Electrolysis System</b>	16/031856	HyTech Power, Inc.	Pending
<b>Ultra Low HHO Injection</b>	16/056062	HyTech Power, LLC	Pending
<b>HHO Assisted Diesel Particulate Filter</b>	16/101035	HyTech Power, LLC	Pending
<b>HHO Gas Distribution System</b>	16/101063	HyTech Power, LLC	Pending
<b>HHO Precision Injection System</b>	16/101084	HyTech Power, LLC	Pending
<b>A Distributed HHO Precision Injection System</b>	16/101137	HyTech Power, LLC	Pending
<b>Onboard HHO Gas Generation System for Heavy Duty Trucks</b>	16/101156	HyTech Power, LLC	Notice of Allowance Mailed
<b>Explosion Safe Electrolysis Unit</b>	16/101178	HyTech Power, LLC	Patented as 10,619,562
<b>Temperature Control for HHO Gas Injection</b>	16/101207	HyTech Power, LLC	Patented as 10,494,992
<b>Rollover Safe Electrolysis Unit for Vehicles</b>	16/101223	HyTech Power, LLC	Pending

## **II. PROCEDURAL POSTURE OF INSTANT CASE**

5. Pursuant to 28 U.S.C. 1446(a), true and correct copies of the State Court Docket and all process, pleadings, and orders served upon the HTP defendants are attached hereto in

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1 conjunction with the filing of this Notice, respectively.

2           6. Under 28 U.S.C. 1446(d), the HTP defendants are filing written notice of this  
3 removal with the Superior Court of the State of Washington for King County concurrently with  
4 the filing of this Notice, and will serve that notice on the Plaintiff, Karma.

5                   **III. WHY THIS MATTER BELONGS IN FEDERAL COURT**

6           7. The complaint alleges causes of action under state law, though it was not  
7 apparent on the face of the complaint that the allegations give rise to a counterclaim arising  
8 under federal law. However, the complaint was cleverly drafted to avoid asserting the one fact  
9 that implicates federal patent law. In fact, the complaint only mentions the term “patent” once  
10 and then, only, then only to assert the Mr. Johnson assigned ownership of all patents developed  
11 by while working for Hybris pursuant to execution of the Associate Agreement. (¶ 9.) At no  
12 point does the Complaint assert the existence of any patents. As drafted, on the face of the  
13 Complaint, the four counts are within the original jurisdiction of the Superior Court of King  
14 County.  
15

16           8. However, the term “Hydrogen IP” is never defined but, by implication, includes  
17 all technology that Generation H2O (¶ 12) developed in cooperation with AJ Automotive  
18 Group in Michigan. (¶ 11) Generation H2O caused AJ Automotive Group to develop the  
19 “Hydrogen IP” and thereby to develop and install equipment for using hydrogen to fuel a Ford  
20 Raptor™ pickup truck (¶ 11). Karma further asserts “Defendants do not have any rights to the  
21 Hydrogen IP or the equipment installed in the Ford Raptor.” (¶ 14). But alleging the sale of the  
22 equipment that makes up Hydrogen IP (¶ 9), implicates 35 U.S.C. § 102, the “anticipation”  
23 chapter of the Patent Act.  
24  
25

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1           9.       Also, since Karma claims that it owns the rights to the Hydrogen IP, it is  
2 effectually claiming that Mr. Johnson is not the inventor of several or all of HTP patent  
3 applications, which if true, mean that all of the HTP patent applications would be ruled invalid  
4 in any assertion of the resulting patents. 35 U.S.C. § 256. Any forum reviewing the patents  
5 would invalidate each of the HTP patent applications pursuant to a violation of the duty of  
6 candor set forth in 37 C.F.R. § 1.56. Therefore, HTP, Inc. and Mr. Johnson necessarily have an  
7 inventorship counterclaim against Karma pursuant to 35 U.S.C. § 256.  
8

9           10.      In its counterclaim, HTP, Inc. and Mr. Johnson seek a declaration pursuant to  
10 the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. § 256  
11 seeking a declaration that Mr. Johnson was properly named as an inventor of the HTP patent  
12 applications as that term is used under 35 U.S.C. §§ 111, 116. Further, the defendants seek a  
13 declaration that Karma is not entitled to any correction of inventorship correction under 35  
14 U.S.C. § 256. Jurisdiction for addressing any claims of inventorship resides in the federal  
15 courts. 28 U.S.C. § 1338 (a):  
16

17           The district courts shall have original jurisdiction of any civil action arising  
18 under any Act of Congress relating to patents, plant variety protection,  
19 copyrights and trademarks. No State court shall have jurisdiction over any claim  
20 for relief arising under any Act of Congress relating to patents, plant variety  
21 protection, or copyrights. For purposes of this subsection, the term “State”  
22 includes any State of the United States, the District of Columbia, the  
Commonwealth of Puerto Rico, the United States Virgin Islands, American  
Samoa, Guam, and the Northern Mariana Islands.

23           11.      As applicant officers and as the named inventor in each of the HTP patent  
24 applications as specified by 37 CFR 1.56, the HTP defendants each have a duty of candor and  
25 any violation of this duty provides a basis for invalidating HTP’s entire patent portfolio.

1 Additionally, an applicant is not entitled to a patent if “the claimed invention was patented,  
2 described in a printed publication, or in public use, on sale, or otherwise available to the public  
3 before the effective filing date of the claimed invention.” 35 U.S.C. § 102(a)(1) (2015). Karma  
4 alleges that Mr. Eystein Borgen purchased, on behalf of his company Ebtec, the Hydrogen IP  
5 and, most importantly, the equipment embodying the Hydrogen IP as was installed on the Ford  
6 Raptor pickup in 2015. (¶ 12). 2015 is more than one year prior to the filing of the HTP patent  
7 applications. If any part of the Hydrogen IP is contained in any one of the HTP patent  
8 applications, the sale would invalidate any HTP, to the extent that such an HTP patent  
9 application is invalid to the extent that HTP application contains the Hydrogen IP.  
10

11 12. Additionally, apart from the possibility of invalidating the whole of the HTP  
12 Patent Applications under 35 U.S.C. § 102, an alternate independent possible basis for  
13 invalidation of the whole of the portfolio based upon the same duty of set forth in 37 C.F.R.  
14 § 1.56 that also requires truthful reporting of all material facts and, thus, to report the sale to  
15 Mr. Borgen if the sale was one of equipment according to any one of the HTP Patent  
16 Applications. HTP would have had a duty to report to the USPTO any invalidating public sale  
17 in the course of prosecuting the applications, if the sale were invalidating. If not known during  
18 prosecution, the USPTO would expect the patent owner to institute a reissue proceeding, but  
19 Congress has reserved the finding of whether the sale with the USPTO and the Federal Courts.  
20 The statutory basis for patent reissue is found in 35 U.S.C. §§251 and 252.  
21

22 13. Thus, a counterclaim seeking declaratory relief pursuant to the Federal  
23 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. § 256 is necessary to  
24 establish by declaration that the HTP defendants did not violate the duty of candor relative to  
25

1 and to the HTP patent applications either as to inventorship or as to reporting the sale of  
 2 equipment embodying Hydrogen IP as none of the HTP patent applications seek to claim any  
 3 part of the Hydrogen IP.

#### 4 5 **IV. BASIS FOR REMOVAL**

##### 6 **A. Removal Under § 1441 is Proper**

7 14. Any civil action brought in state court of which the district courts of the United  
 8 States have original jurisdiction may be removed to the district court for the district and  
 9 division where such action is pending. 28 U.S.C. § 1441. District courts of the United States  
 10 have original and exclusive jurisdiction “over any claim for relief arising under any Act of  
 11 Congress relating to patents.” 28 U.S.C. § 1338(a); *Gunn v. Minton*, 568 U.S. 251, 264 (2013).

12 15. Even when a plaintiff pleads claims under state law, the claims arise under the  
 13 original jurisdiction of federal courts if a federal issue is: “(1) necessarily raised, (2) actually  
 14 disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the  
 15 federal-state balance approved by Congress.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013).

16 16. The complaint alleges causes of action under state law. However, Karma’s  
 17 underlying claims actually implicate issues that arise under federal law, specifically 35 U.S.C.  
 18 § 256 and 35 U.S.C. § 102(a)(1) and because of the resulting peril to the HTP Patent  
 19 Applications, a justiciable controversy exist. Courts have routinely held that inventorship is a  
 20 substantial issue within the exclusive jurisdiction of federal courts. “[I]ssues of inventorship . .  
 21 . present sufficiently substantial questions of federal patent law to support jurisdiction under  
 22 section 1338(a).” *Board of Regents v. Nippon Telephone and Telegraph Corp.*, 414 F.3d 1358,  
 23 1363 (Fed. Cir. 2005). And, there will be no disruption of the federal-state balance because  
 24  
 25

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1 federal courts have exclusive jurisdiction over such claims.

2 17. The issues of inventorship and duty of candor that could invalidate the HTP  
3 patent applications have been necessarily raised. Resolution of these issues are potentially  
4 dispositive of Karma's state causes of action.

5 **B. Removal Under § 1446 is Proper**

6 18. 28 U.S. Code § 1454(a) states: "A civil action in which any party asserts a claim  
7 for relief arising under any Act of Congress relating to patents, plant variety protection, or  
8 copyrights may be removed to the district court of the United States for the district and division  
9 embracing the place where the action is pending." The appropriate court for construing claims  
10 and determining inventorship is the Federal District Court for the Western District of  
11 Washington at Seattle. The provision was "intended to provide federal courts . . . with a  
12 broader range of jurisdiction; that is, with jurisdiction over claims arising under the patent laws  
13 even when asserted in counterclaims, rather than in an original complaint." *Vermont v. MPHJ*  
14 *Tech. Investments, LLC*, 803 F.3d 635, 644 (Fed. Cir. 2015).

15 19. The matter is removable under 28 U.S.C. § 1454 because the HTP defendants  
16 filed a counterclaim for declaratory relief seeking declarations pursuant to the Federal  
17 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. § 256 that (1) Mr.  
18 Johnson was properly named as an inventor of the HTP patent applications as that term is used  
19 under 35 U.S.C. §§ 111, 116 and Karma is not entitled to any correction of inventorship  
20 correction under 35 U.S.C. § 256, and (2) the HTP defendants did not violate the duty of  
21 candor relative to the sale of equipment according to the Hydrogen IP as prior art.  
22  
23  
24  
25

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1 **C. Supplemental Jurisdiction**

2 20. To the extent that this Court finds that any of Karma’s claims do not arise under  
 3 federal law, supplemental jurisdiction is proper to remove Karma’s remaining claims. Karma’s  
 4 causes of action—conversion, misappropriation of trade secrets, and unjust enrichment—form  
 5 part of the same case or controversy under Article III of the United States Constitution. 28  
 6 U.S.C. § 1367(a).  
 7

8 **V. NOTICE OF REMOVAL IS TIMELY**

9 **A. The 30-Day Clock Started Ticking After Receipt of “Other Paper”**

10 21. Typically, removal requires a defendant file a notice of removal within 30 days  
 11 of receipt of the initial pleading. 28 U.S.C. § 1446(b)(1). However, if on its face, the initial  
 12 pleading is not removable, then a notice of removal may be filed within 30 days after receipt by  
 13 the defendant “of a copy of an amended pleading, motion, order or other paper from which it  
 14 may first be ascertained that the case is one which is or has become removable.” 28 U.S.C.  
 15 § 1446(b)(3). “[T]he inquiry begins and ends within the four corners of the pleading. The  
 16 inquiry is succinct: whether the document informs the reader, to a substantial degree of  
 17 specificity, whether all the elements of federal jurisdiction are present.” *Rowe v. Marder*, 750  
 18 F. Supp. 718, 721 (W.D. Pa. 1990), *aff’d*, 935 F.2d 1282 (3d Cir. 1991). As such, the Ninth  
 19 Circuit holds that “the ‘thirty day time period [for removal] . . . starts to run from defendant’s  
 20 receipt of the initial pleading *only* when that pleading affirmatively reveals on its face’ the facts  
 21 necessary for federal court jurisdiction.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 690-  
 22 691 (9th Cir. 2005), *emphasis added*. A defendant’s subjective knowledge is not a test for  
 23 notice. *Harris*, 425 F.3d at 695.  
 24  
 25

1           22.     It is not uncommon for a state court pleading to omit the necessary facts needed  
2 to determine diversity. *Harris*, 425 F.3d at 693. Thus, “Section 1454 permits the Defendants to  
3 remove the action to federal court on the basis that either the Plaintiffs’ claims or the  
4 Defendants’ counterclaims “arise under” an Act of Congress related to patents. 28 U.S.C.  
5 § 1454.” *Preston v. Nagel*, 166 F. Supp. 3d 92, 98 (D. Mass. 2016).

6  
7           23.     The complaint alleges causes of action under state law. Thus, on its face, the  
8 matter is not removable. However, on April 28, 2020, in a settlement offer, the Plaintiff  
9 implicitly asserted its right to the patents and patent applications and demanded they be  
10 assigned to the Plaintiff with a license back in exchange for royalties. (McGlothin Dec. ¶ 2).  
11 Because of this assertion of right, questions of inventorship and validity of the patents make up  
12 the same nucleus of operative facts, i.e. arises out of the transaction or occurrence that is the  
13 subject matter of the opposing party's claim. FRCP 13(a). The claim for a declaration of  
14 validity and inventorship is compulsory and is appropriately timed from the settlement demand  
15 on April 28.

16  
17           24.     If the Court finds this removal untimely because the settlement demand does not  
18 constitute an “other paper” pursuant to the statute, the Court should nevertheless extend the  
19 time for removal.

20  
21           25.     By enacting § 1454, Congress sought to make removal of patent claims easier in  
22 order to ensure uniformity of patent law. It is not until Mr. McGlothin perceived that Karma  
23 sought an interest in the patent portfolio on April 28, that a patent claim would be implicit in  
24 the expression of the Complaint in the context of the patent portfolio. Every claim in a patent  
25 or application defines an invention, and each claim presents a question of inventorship and of

1 validity. HTP's counterclaim is necessary because Karma alleges that the HTP Patent  
 2 Applications are based upon its trade secrets and that there was a sale of equipment based upon  
 3 those trade secrets more than a year before the filing of the HTP Patent Applications. But, in  
 4 order for this issue to be determined, the meaning of pending and issued patent claims must be  
 5 determined first. If the "Hydrogen IP" is distinct from the scope of properly construed claims,  
 6 then there are not questions of inventorship or of validity raised by the Complaint, but only on  
 7 that basis. Inventorship is a federal question. *E.g., Univ. of Colo. Found., Inc. v. Am. Cyanamid*  
 8 *Co.*, 196 F.3d 1366, 1372 (Fed.Cir.1999). (See McGlothlin Decl., at ¶2.)

10 26. The time limitations in § 1446(b) may be extended "at any time for cause  
 11 shown." 28 U.S.C. § 1454(b)(2). Section 1454 does not define "cause shown," and there is  
 12 sparse authority interpreting the provision. See *SnoWizard, Inc. v. Andrews*, No. 12-2796, 2013  
 13 WL 3728410, at \*6 (E.D. La. July 12, 2013). But "[c]ause shown cannot ... simply be that the  
 14 removing party has asserted a patent claim and federal courts are the exclusive forums of such  
 15 claims." *Univ. of Ky. Res. Found., Inc. v. Niadyne, Inc.*, No. 13-16-GFVT, 2013 WL 5943921,  
 16 at \*10 (E.D. Ky. Nov. 5, 2013). In analyzing whether a removing party has shown cause,  
 17 courts look to Federal Rule of Procedure 6(b)(1)(B). See, e.g., *Van Steenburg v. Hageman*, No.  
 18 SA:14-CV-976-DAE, 2015 WL 1509940, at \*6 (W.D. Tex. Mar. 31, 2015); *Andrews v.*  
 19 *Daughtry*, 994 F. Supp. 2d 728, 734–35 (M.D.N.C. 2014).

22 27. Rule 6(b)(1)(B) permits a court to extend a deadline for good cause if the party  
 23 seeking the extension failed to act because of "excusable neglect." Fed. R. Civ. P. 6(b)(1)(B).  
 24 District courts have "broad discretion to grant or deny an extension." *Salts v. Eps*, 676 F.3d  
 25 468, 474 (5th Cir. 2012) (*quoting Wright & Miller, Fed. Prac. & Proc.* § 1165). Factors

1 relevant to a determination of excusable neglect include: “(1) ‘the possibility of prejudice to the  
2 other parties,’ (2) ‘the length of the applicant’s delay and its impact on the proceeding,’ (3) ‘the  
3 reason for the delay and whether it was within the control of the movant,’ and (4) ‘whether the  
4 movant has acted in good faith.’ ” *Id.* (quoting *Wright & Miller, Fed. Prac. & Proc.* § 1165).

5 All four factors as applied to the instant case militate for removal.  
6

7 28. This standard is not a high bar to extend the deadline, but it does require at least  
8 some explanation for the removing party’s delay. *See, e.g., Van Steenburg*, 2015 WL 1509940,  
9 at \*6 (finding cause for twenty-day delay when counterclaimants did not register copyrighted  
10 images until after removal deadline).

11 29. The first factor weighs in favor of extending the time for removal; neither party  
12 can claim prejudice. The Plaintiff has no claim that it has been prejudiced. what other prejudice  
13 they suffered based on Defendants’ two-month delay in filing a notice of removal or what  
14 prejudice they will suffer if the Court extends the time to remove. No deposition has yet  
15 occurred nor has there been significant discovery. Thus, the Court should not find that any  
16 prejudice would occur were time to remove extended.  
17

18 30. This ties into the next factor: the length of the delay and its impact on the  
19 proceeding. This notice of remove functions to remove the case only one month after the 30-  
20 day deadline expired from the March 7 service of the Complaint herein. No substantive  
21 proceedings have been heard to date and the only issues presented have been relative to a  
22 proposed reassignment of the case to a different judge and some preliminary discovery issues.  
23

24 31. Delay is undue and prejudicial if it hinders the opposing party’s ability to  
25 respond to the proposed amendment or to prepare for trial. This Court and other courts have

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1 found prejudice, for instance, if the amendment is asserted after the close of discovery; after  
 2 dispositive motions have been filed, briefed, or decided; or on the eve of or in the middle of  
 3 trial. *See Smith v. EMC Corp.*, 393 F.3d 590, 594–96 (5th Cir. 2004) (affirming denial of leave  
 4 to amend— finding the delay undue and prejudicial—because the amendment would add a new  
 5 claim in the middle of trial after discovery had closed); *Campbell v. Emory Clinic*, 166 F.3d  
 6 1157, 1162 (11th Cir. 1999) (“Prejudice and undue delay are inherent in an amendment  
 7 asserted after the close of discovery and after dispositive motions have been filed, briefed, and  
 8 decided.”); *Solomon v. N. Am. Life & Cas. Ins. Co.*, 151 F.3d 1132, 1139 (9th Cir. 1998)  
 9 (affirming denial of leave to amend where the plaintiff filed the motion “on the eve of the  
 10 discovery deadline”). No such prejudice has here occurred.

12           32. If the court does not find that the settlement demand is an “other paper” even  
 13 the timing is less than one month past the expiration of the thirty-day clock, service being  
 14 accomplished on March 7, 2020. The time is not excessive.

16           33. With respect to the third and fourth factors, these cannot be considered in a  
 17 vacuum but rather that the time passed in the face of a pandemic that has triggered decrees by  
 18 both the President of the United States and by the Governor of Washington which have  
 19 negatively impacted review of the case. Further, there is nothing within the four corners of the  
 20 Complaint which contained a removable claim.” It was not until the Plaintiff communicated its  
 21 belief in its entitlement to the patent portfolio, that the Defendants could ascertain from the  
 22 face of a pleading.

24           34. This case is case is not like *Trubow v. Morisky*, No. 2:19-cv-01670-RAJ  
 25 (WDWA March 26, 2020). Like all of those that implicate the Copyright Act, the expression of

1 “ownership” of any tangible expression of an idea can only fall within the Copyright Act. Any  
2 complaint asserting ownership implies a copyright claim because the utterance of such is an  
3 expression, by itself, the either a dedication of that expression to the public or is owned by  
4 uttering person through an invocation of rights under the Copyright Act. Thus, no expression of  
5 ownership of a tangible expression of an idea can be formulated without reference to the  
6 Copyright Act. In the context of books, movies, software, and other tangible expressions of  
7 ideas, copyright is the only means to ownership.  
8

9 35. This case is distinct; whereas any statement of facts in a copyright case, when  
10 stated, contains an implicit reliance upon the Copyright Act, the Plaintiff’s case could be  
11 completely expressed as a “trade secrets” case. It was not incomplete except in its expression  
12 of relevant facts. It is only in knowing the extra fact of the existence of the HTP’s ownership  
13 above-set-forth patents and patent applications (“HTP Patent Applications”) which makes  
14 patent law relevant. This fact of the HTP Patent Applications is never mentioned in the  
15 Complaint. The HTP Patent Applications, however, may be fatally affected by a state court  
16 pronouncement asserting the equivalence of Hydrogen IP and the subject matter of any patent  
17 application in the HTP Patent Applications.  
18

19 36. The facts set forth in the McGlothlin declaration point out all the many issues  
20 that the COVID-19 pandemic has visited upon the efforts in this case. Communications have  
21 been delayed, and those delays have been entirely outside of the control of Defendants. Shelter  
22 in place orders and the decrees demanding nonessential workers remain away from law firms,  
23 insurance companies and relative to the individual defendants. There is no doubt that the  
24 defense legal team has moved as expeditiously as could be done in such an environment.  
25

NOTICE OF REMOVAL - 14

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1 Because these delays have been entirely outside of the power of the defendants, even, in fact  
 2 Mr. McGlothin's emergency surgery (McGlothin Dec. ¶20). There can be no suggestion that  
 3 these delays are "manufactured" or the fruit of malfeasance. The actions of the defense legal  
 4 team have been suitably diligent in the face of such a pandemic.

5 37. Returning, however, to the "other paper", the first time, though, that the Plaintiff  
 6 has expressed any interest in the HTP Patent Applications has been on April 28. Thus, the  
 7 patent issue was first ascertainable only upon receipt of the April 28 settlement demand. HTP's  
 8 30-day clock began ticking when it received this demand as this was the first "paper" from  
 9 which it could be ascertained from the face of the document that removal [was] proper." 28  
 10 U.S.C. § 1446(b)(3); *Harris*, 425 F.3d at 690-691.

#### 12 **B. Good Cause Exists for Removal Under § 1454**

13 38. Claims related to patents are removable to federal court: "A civil action in  
 14 which any party asserts a claim for relief arising under any Act of Congress relating to patents.  
 15 . . . may be removed to the district court of the United States for the district and division  
 16 embracing the place where the action." 28 U.S.C. § 1454(a) (emphasis added). Removal of an  
 17 action under § 1454(a) "shall be made in accordance with section 1446, except that . . . the time  
 18 limitations contained in section 1446(b) may be extended at any time for cause shown." 28  
 19 U.S.C. § 1454(b)(1)–(2).

20 39. There is good cause to extend the 30-day limitation for removal under  
 21 § 1454(b)(2). District courts that have considered the good cause language in the statute have  
 22 applied authorities interpreting Federal Rule of Civil Procedure 6(b) allowing district courts to  
 23 extend deadlines for good cause. *NematicITO, Inc. v. Spectrum Five LLC*, No. 16-CV-01859-  
 24  
 25

1 RS, 2016 WL 3167181, at \*4 (N.D. Cal. June 6, 2016). “‘Good cause’ is a non-rigorous  
 2 standard,” but it generally requires a showing that the “requested relief was reasonable,  
 3 justified, and would not result in prejudice to any party.” *Id.*, citing *Ahanchian v. Xenon*  
 4 *Pictures, Inc.*, 624 F.3d 1253, 1260 (9th Cir. 2010).

5 40. Given that the basis for removal was not within the four corners of the  
 6 Complaint, the delay between the removal deadline of April 6, 2010 and removal on April 30,  
 7 2020, less than one month, is not substantial. See *Recif Res., LLC v. Juniper Capital Advisors,*  
 8 *L.P.*, No. CV H-19-2953, 2019 WL 5457705, at \*2 (S.D. Tex. Oct. 24, 2019) where a delay of  
 9 14 weeks was not substantial.  
 10

# 11 **VI. INTRADISTRICT ASSIGNMENT**

12 41. Removal to the United States District Court for the Western District of  
 13 Washington is proper under 28 U.S.C. § 1441 because the complaint was filed in the Superior  
 14 Court of the State of Washington for King County, which is located within the jurisdiction of  
 15 this District.  
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 25



1 DATED this 5th day of May, 2020.

2 /s/ Scott B. Henrie, WSBA #12673  
3 /s/ Mark L. Lorbiecki, WSBA #16796  
4 /s/ Theresa H. Rava, WSBA #53159  
5 Scott B. Henrie, WSBA #12673  
6 Mark L. Lorbiecki, WSBA #16796  
7 Theresa H. Rava, WSBA #53159  
8 WILLIAMS, KASTNER & GIBBS PLLC  
9 601 Union Street, Suite 4100  
10 Seattle, WA 98101-2380  
11 Telephone: (206) 628-6600 Fax: (206) 628-6611  
12 Email: [shenrie@williamskastner.com](mailto:shenrie@williamskastner.com) ;  
13 [mlorbiecki@williamskastner.com](mailto:mlorbiecki@williamskastner.com);  
14 [trava@williamskastner.com](mailto:trava@williamskastner.com)

15 *Attorneys for Defendants HTP, Inc.; Evan*  
16 *Johnson; and Phillip Jennings; and Henry Dean*

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on May 5, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those registered with ECF in the manner indicated below:

Andrew R. Escobar, WSBA #42793  
Joseph Davison, WSBA #51264  
DLA PIPER LLP (US)  
701 Fifth Avenue, Suite 6900  
Seattle, WA 98104-7044  
Telephone: (206) 839-4800  
E-mail: [andrew.escobar@dlapiper.com](mailto:andrew.escobar@dlapiper.com) ;  
and [joseph.davison@dlapiper.com](mailto:joseph.davison@dlapiper.com)

***Attorneys for Plaintiff Karma Power, LLC***

Dennis J. McGlothlin, WSBA No. 28177  
Robert J. Cadranell, WSBA No. 41773  
WESTERN WASHINGTON LAW  
GROUP, PLLC  
7500 212<sup>th</sup> St. SW, Suite 207  
Edmonds, WA 98026  
Telephone: (425) 728-7296  
Email: [robert@westwalaw.com](mailto:robert@westwalaw.com)  
[dennis@westwalaw.com](mailto:dennis@westwalaw.com); and  
[docs@westwalaw.com](mailto:docs@westwalaw.com)

***Counsel for Defendants***

Kathleen A. Nelson, WSBA #22826  
Laura Hawes Young, WSBA #39346  
Jonathan Missen, WSBA #42689  
Brian Rho, WSBA #51209  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
1111 Third Avenue, Suite 2700  
Seattle, WA 98101  
Telephone: (206) 436-2020  
E-mail: [kathleen.nelson@lewisbrisbois.com](mailto:kathleen.nelson@lewisbrisbois.com);  
[laura.young@lewisbrisbois.com](mailto:laura.young@lewisbrisbois.com);  
[jonathan.missen@lewisbrisbois.com](mailto:jonathan.missen@lewisbrisbois.com);  
[brian.rho@lewisbrisbois.com](mailto:brian.rho@lewisbrisbois.com);  
[tami.foster@lewisbrisbois.com](mailto:tami.foster@lewisbrisbois.com)

***Counsel for Defendants***

DATED this 5th day of May, 2020.

/s/ Scott B. Henrie, WSBA #12673  
Scott B. Henrie, WSBA #12673  
WILLIAMS, KASTNER & GIBBS PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
Telephone: (206) 628-6600 Fax: (206) 628-6611  
Email: [shenrie@williamskastner.com](mailto:shenrie@williamskastner.com)  
***Attorneys for Defendants HTP, Inc.; Evan  
Johnson; and Phillip Jennings; and Henry Dean***

NOTICE OF REMOVAL - 18  
(USDC Case No. )

USDC Case No. 20-cv-677  
7095203.2

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
(206) 628-6600